

INDIANA JUDICIAL NOMINATING COMMISSION
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Fiscal Year 2002-2003

Meg Babcock, Counsel

The Indiana Judicial Nominating Commission and the Indiana Commission on Judicial Qualifications is a seven-member commission established by Article VII, Section 9, of the Constitution of Indiana. It performs two distinct functions within the judiciary. The Nominating Commission appoints the Chief Justice of Indiana from among the five Supreme Court Justices. It also solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. The Nominating Commission selects three candidates for each vacancy, and the Governor appoints one of the nominees to fill the vacancy. (There were no vacancies in fiscal year 2002-2003.) The Nominating Commission also certifies former judges as Senior Judges to help qualifying courts with their caseloads.

The Qualifications Commission investigates allegations of ethical misconduct against Indiana judges, judicial officers, and candidates for judicial office. When appropriate, the Commission may privately caution judges who have violated the Code of Judicial Conduct; in the most serious cases, the Commission prosecutes formal disciplinary charges in public proceedings. These charges ultimately are resolved by the Supreme Court. Additionally, the Commission and its staff provide judges and others with advice about their ethical obligations and, periodically, the Commission publishes formal Advisory Opinions.

The Chief Justice of Indiana, Randall T. Shepard, is the *ex officio* Chairman of the Nominating Commission and the Qualifications Commission. The Commission is comprised additionally of three lawyers, elected by other lawyers in their districts, and three non-lawyers who are appointed by the Governor, all to three-year terms. Other Commission members serving in 2002-2003 were Theodore Lockyear, Esq., Evansville;

Judy Johns Jackson, Columbus; Donald W. Ward, Esq., Indianapolis; John Bartlett, Indianapolis; John O. Feighner, Esq., Fort Wayne, and Ann S. Borne, Fort Wayne. Terrance Smith, Esq., Highland, served until the end of his term on January 1, 2003.

The Nominating Commission met on four occasions during the fiscal year. It recertified eighty-two Senior Judges, certified twenty-one new Senior Judges, and declined to certify one applicant for Senior Judge status.

In fiscal year 2002-2003, the Judicial Qualifications Commission convened on nine occasions. The Commission had on its docket two hundred eighty-four complaints or allegations of violations of the Code of Judicial Conduct. The Commission summarily dismissed two hundred thirty-four complaints but, in response to seven, sent advisory letters to the judges. The Commission inquired into, investigated, or filed charges in response to forty-nine complaints. The Commission dismissed seventeen complaints after concluding no misconduct occurred. In twenty other cases, the Commission issued private cautions. The most common cautions related to *ex parte* contacts (6) and injudicious demeanor (5), followed by cautions about administrative failures or delays (3 each), then inappropriate political activity, failures to disqualify, and mistreatment of lawyers or litigants (2 each). (Some cautions related to more than one violation).

In lieu of proceeding to formal charges, the Commission resolved three cases by issuing Public Admonitions with the consent of the judges. The Commission issued Public Admonition of former Marion Superior Court Judge Webster L. Brewer on August 22, 2002, Public Admonition of the Honorable J. Steven Cox, Franklin Circuit Court, on March 21, 2003, and Public Admonition of the Honorable Kenneth R. Scheibenberger, Allen Superior Court, on December 17, 2002.

Three complaints from the prior fiscal year were resolved when the judge agreed to resign after formal charges, a hearing, and a report from the Masters concluding he committed misconduct. *In re Kern*, 774 N.E.2d 878 (Ind. 2002). The Masters in that case were the Honorable Diana LaViolette, Presiding Master, Putnam Circuit Court, the Honorable Phillip I. Adler, Vigo Superior Court 2, and the Honorable K. Mark Loyd, Johnson Circuit Court.

Another case in which the Commission filed formal charges in the prior year was resolved when the judge and the Commission agreed to a Public Reprimand. *In re Danikolas*, 783 N.E.2d 687 (Ind. 2003). The Masters assigned to that case were the Honorable Nancy E. Boyer, Presiding Master, Allen Superior Court, the Honorable Terry C. Shewmaker, Elkhart Circuit Court, and the Honorable Roland W. Chamblee, Jr., St. Joseph Superior Court.

The Commission filed formal charges against one judge in fiscal year 2002-2003. In *In re Spencer*, 48S00-0210-JD-514, the Honorable Steven E. King, Presiding Master, LaPorte Superior Court 2, the Honorable Barbara L. Brugnaux, Vigo Superior Court 5, and the Honorable James W. Rieckhoff, Elkhart Superior Court 5, conducted an evidentiary hearing on March 6, 2003. The Masters concluded the judge committed misconduct and recommended to the Supreme Court that it impose a sanction against the judge of up to thirty days suspension from office without pay. At the conclusion of the fiscal year, the case was pending before the Supreme Court on the Commission's recommendation that the Court impose the full thirty-day suspension. The fiscal year concluded with five inquiries or investigations pending.

Finally, in fiscal year 2002-2003, Commission counsel responded to approximately five hundred fifty requests for guidance about the ethics rules. The Commission issued one published opinion, Advisory Opinion #1-02, concerning permissible judicial campaign speech.